Supreme Court, U.S.
FILED
JUL 19 2001
OFFICE OF THE CLERK

No. 00-1887

In The

Supreme Court of the United States

DONALD G. STELZNER and DONNA M. STELZNER,

Petitioners,

v.

COMMISSIONER OF REVENUE,

Respondent.

On Petition For Writ Of Certiorari To The Minnesota Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MIKE HATCH
Attorney General
State of Minnesota

CRAIG R. ANDERSON
Assistant Attorney General
Counsel of Record
600 N. Robert Street, Suite 4000
Mail Station 0600
St. Paul, MN 55146-0600
(651) 296-3424
Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

23 pp

QUESTION PRESENTED

Does Minnesota's taxation of the net income derived from a business with interstate aspects by an individual who maintains an abode and resides for more than one-half of the tax year in Minnesota violate the Commerce Clause of the United States Constitution?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE AND FACTS 1

REASONS FOR DENYING THE PETITION 4

I. Petitioners Have Not Met The Standards For Exercise Of This Court's Certiorari Jurisdiction 4

II. The Minnesota Supreme Court's Commerce Clause Holding In This Case Was Correct And Does Not Warrant Review 6

CONCLUSION 17

TABLE OF AUTHORITIES

Page

CONSTITUTION

U.S. Const., art 1, § 8 cl. 3 5

FEDERAL CASES

Camps Newfound/Owatonna, Inc. v. Town of Harrisson, 520 U.S. 564 (1997) 16

Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981) 12, 17

Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977) 13, 14

Container Corp. v. Franchise Tax Board, 463 U.S. 159 (1983) 13, 15

Florida v. Mellon, 273 U.S. 12 (1927) 16

General Motors Corporation v. Tracy, 519 U.S. 278 (1997) 4, 8

Goldberg v. Sweet, 488 U.S. 252 (1989) 15

Guaranty Trust Company v. Virginia, 305 U.S. 19 (1938) 5

Lawrence v. State Tax Commission, 286 U.S. 276 (1932) 5, 10

Maguire v. Trefry, 253 U.S. 12 (1920) 5, 10

New York ex rel. Cohn v. Graves, 300 U.S. 308 (1937) .. 5, 10

Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959) 10

TABLE OF AUTHORITIES – Continued

Page

Oklahoma State Tax Commission v. Jefferson Lines, Inc., 514 U.S. 175 (1995) 5, 6, 13

Oklahoma Tax Comm'n v. Chickasaw Nation, 515 U.S. 450 (1995) 5, 9

Quill Corp. v. North Dakota, 504 U.S. 298 (1992) 12

Reiling v. Lacy, 93 F. Supp. 462 (D. Md. 1950) appeal dismissed sub nom. *Reiling v. Tawes*, 341 U.S. 901 (1951) 12

Trinova Corporation v. Michigan Dep't of Treasury, 498 U.S. 358 (1991) 14

Underwood Typewriter Co. v. Chamberlain, 254 U.S. 113 (1920) 14

United States Glue Co. v. Town of Oak Creek, 247 U.S. 321 (1918) 11

Western Livestock v. Bureau of Revenue, 303 U.S. 250 (1938) 17

Wickard v. Filburne, 317 U.S. 111 (1942) 16

William E. Peck Co. v. Lowe, 247 U.S. 165 (1918) 10

FEDERAL COURT RULES

U.S. S. Ct. R. 10 4

STATE CASES

Luther v. Commissioner of Revenue, 588 N.W.2d 502 (Minn.), cert. denied, 528 U.S. 821 (1999) 3, 9, 12

People ex rel. Ryan v. Lynch, 262 N.Y. 1, 186 N.E. 28 (1933) 12

TABLE OF AUTHORITIES – Continued

Page

Stelzner v. Commissioner of Revenue, 621 N.W.2d 736 (Minn. 2001) ..... *passim*

Stelzner v. Commissioner of Revenue, 2000 WL 37865 (Minn. T.C. Jan. 12, 2000)..... 1

Tamagni v. Tax Appeals Tribunal, 91 N.Y.2d 530, 695 N.E.2d 1125, 673 N.Y.S.2d 44, cert. denied, 525 U.S. 931 (1998) 7, 11

Wood v. Tawes, 181 Md. 155, 28 A.2d 850 (1942), cert. denied 318 U.S. 788 (1943)..... 12

STATE STATUTES

Act of June 30, 2001, Minn. Laws 2001, 1st Sp. Sess., ch. 5, art 9, § 2 7

Act of May 28, 1987, ch. 268, Art. 1, § 10, 1987 Minn. Laws 1039, 1044 6

Minn. Stat. § 290.01, subd. 7.....6, 7

Minn. Stat. § 290.01, subd. 7(2)..... *passim*

Minn. Stat. § 290.014, subd. 1..... 6

Minn. Stat. § 290.06, subd. 22 (2000) 11, 14, 15

Minn. Stat. § 290.17 (2000)..... 6

Minn. Stat. ch. 290 (2000)..... 6

OTHER AUTHORITIES

Seth Goldstein, Note, *"Resident" Taxpayers: Internal Consistency, Due Process, and State Income Taxation*, 91 Colum. L. Rev. 119 (1991) 7

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Minnesota Commissioner of Revenue respectfully requests that the Court deny the Petition for Writ of Certiorari seeking review of the decision of the Supreme Court of Minnesota in this case. The opinion of the Minnesota Supreme Court is reported at 621 N.W.2d 736 (2001), and is reproduced in App. to Pet. for Cert. 1a-13a. The opinion of the Minnesota Tax Court is reported in Westlaw. *See Stelzner v. Commissioner of Revenue*, 2000 WL 37865 (Minn. T.C. Jan. 12, 2000). The tax court opinion is also reproduced in the Petition for Writ of Certiorari at App. to Pet. for Cert. 14a-28a.

STATEMENT OF THE CASE AND FACTS

Respondent adopts the procedural and factual description of this case by the courts below. See 621 N.W2d at 736-39, App. to Pet. for Cert. 1a-6a (Minn. Sup. Ct.); App. to Pet. for Cert. 15a-17a (Tax Ct.). We here briefly note only a few salient points.

From 1983 through 1999 Petitioners Donald and Donna Stelzner maintained a residence and spent the vast majority of their time in Minneapolis, Minnesota. *See* 621 N.W.2d at 737, App. to Pet. for Cert. 1a-2a. The only other residence that Petitioners occupied during the period in question was a studio condominium located in Las Vegas, Nevada. Petitioners rented this condominium and lived there for short periods of time from 1979 to May 1993. In that month Petitioners purchased the condominium unit. *See* 621 N.W.2d at 738, App. to Pet. for Cert. 16a.

Since the 1970's, Petitioner Donald Stelzner has operated a business in which he disposes of unwanted foreign and mutilated currency accumulated by gaming casinos. Most of Petitioner's clients in this foreign exchange business are casinos located in Nevada or New Jersey. *See* 621 N.W.2d at 738, App. to Pet. for Cert. 3a. During the period in question, most of Petitioners' income came from these foreign exchange operations. *Id.* Petitioners conducted the bulk of this foreign exchange business from their Minneapolis home. App. to Pet. for Cert. 22a-23a. Petitioners regularly availed themselves of the panoply of benefits associated with residence in Minnesota. App. to Pet. for Cert. 23a.

On July 20, 1995, following an audit of Petitioners' state income tax liabilities, Respondent issued an Order determining that Petitioners were liable for Minnesota income taxes for each of the seven taxable years from 1987 through 1993. Petitioners had filed no Minnesota income tax returns during this period, contending that throughout the period they were residents and domiciliaries of Nevada. The Respondent based the July 20, 1995, Order on his conclusions that for each year during the period in question: 1) Petitioners were common law Minnesota domiciliaries, and 2) irrespective of domicile, they were tax residents of Minnesota within the meaning of Minn. Stat. § 290.01, subd. 7(2).

Petitioners commenced an administrative appeal within the Minnesota Department of Revenue from the July 20, 1995 Order. On October 31, 1997, the Respondent denied the appeal and affirmed the assessment.

On January 27, 1998, Petitioners appealed that Order to the Minnesota Tax Court. On appeal, Petitioners argued, *inter alia*, that Respondent's income tax assessment violated the Commerce Clause of the Federal Constitution.

On January 12, 2000, the Tax Court issued its Findings of Fact, Conclusions of Law, and Order (App. to Pet. for Cert. 14a-28a) affirming the Commissioner's October 31, 1997, Order. The Tax Court found it unnecessary to reach Respondent's contention that the order was proper, because the Petitioners were Minnesota domiciliaries during the period in question.[1] App. to Pet. for Cert. 20a. Petitioners conceded that at all relevant times they were tax residents of Minnesota within the meaning of Minn. Stat. § 290.01, subd. 7(2), because they maintained an abode and were physically present in Minnesota for more than half of each year during the period in question. The court rejected Petitioners' Commerce Clause challenge to that statute. App. to Pet. for Cert. 20a-23a.

The Minnesota Supreme Court affirmed the Tax Court's decision. *Stelzner v. Commissioner of Revenue*, 621 N.W.2d 736 (Minn. 2001); App. to Pet. for Cert. 1a-13a. In rejecting Petitioners' Commerce Clause contention,[2] the Minnesota Supreme Court relied on its recent decision in *Luther v. Commissioner of Revenue*, 588 N.W.2d 502 (Minn.),

---

[1] Acceptance of Petitioners' constitutional contentions would thus not end this case. In that event it would still be open to Respondent to urge on remand that the assessment be affirmed on this separate ground.

[2] The Court noted that the issue of Petitioners' common law domicile was not before it. *See* 621 N.W.2d at 739.

cert. denied, 528 U.S. 821 (1999), where it had rejected a Commerce Clause challenge to Minn. Stat. § 290.01, subd. 7(2) as applied to tax income received by a Florida domiciliary from a Florida-based trust. Looking to this Court's decisions in cases such as *General Motors Corporation v. Tracy*, 519 U.S. 278 (1997), the court below observed that a state tax statute does not violate the dormant Commerce Clause

> "unless there is actual or prospective competition between entities in an identifiable market and state action expressly discriminates against or places an undue burden on interstate commerce. . . . The Stelzners contend that [the Minnesota residency statute] burdens their ability to continue as major participants in a competitive interstate market . . . [but they] have not shown anything more than an incidental impact on their cost of doing business in interstate commerce. This is not sufficient evidence of either discrimination against or an undue burden on interstate commerce. . . . "

621 N.W.2d at 740-41; App. to Pet. for Cert. 10a.

REASONS FOR DENYING THE PETITION

I. Petitioners Have Not Met The Standards For Exercise Of This Court's Certiorari Jurisdiction.

This Court's Rule 10 sets forth the well-known criteria generally informing the Court's decision as to whether to grant certiorari. In the instant case, these criteria are strikingly unsatisfied.

There is no reason for the Court to grant review in this case. The decision of the Minnesota Supreme Court is not contrary to the decisions of this Court, or to those of any other state court of last resort, or to those of a United States Court of Appeals. Nor does this case present an important question of federal law that has not been, but should be, settled by this Court. Petitioners have demonstrated no need for the Court to clarify or reexamine the well-established rationale for state taxation of the income its residents earn from all sources under *Oklahoma Tax Comm'n v. Chickasaw* Nation, 515 U.S. 450 (1995), *New York ex rel. Cohn v. Graves*, 300 U.S. 308 (1937), *Lawrence v. State Tax Commission*, 286 U.S. 276 (1932), and *Maguire v. Trefry*, 253 U.S. 12 (1920). *See* also *Guaranty Trust Company v. Virginia*, 305 U.S. 19 (1938).

Petitioners argue (Pet. for Cert. 7) that the instant case presents this Court with an opportunity to address what they characterize as a conflict between due process cases such as *Chickasaw Nation*, *Cohn* and *Lawrence* and authorities such as *Oklahoma State Tax Commission v. Jefferson Lines, Inc.*, 514 U.S. 175 (1995) (dealing with the validity of state tax schemes under the Commerce Clause). However, Petitioners' asserted conflict among this Court's precedents is chimerical. Petitioners do not argue that Minnesota's tax scheme denies them due process. Whether, as applied here, that scheme violates the dormant Commerce Clause[3] is a question which this Court's

---

[3] *See* U.S. Constitution, Art. I, § 8, cl. 3 "The Congress shall have power . . . to regulate commerce with foreign nations, and among the several states, ..." The dormant aspect of this clause refers to its implicit "negative command . . . prohibiting

decisions have long answered in the negative. This case presents no occasion for the Court to depart from its long-standing interpretation of the Commerce Clause and impose the novel requirement of state apportionment of individual income urged by Petitioners.

II. The Minnesota Supreme Court's Commerce Clause Holding In This Case Was Correct And Does Not Warrant Review.

Minnesota imposes an income tax under the provisions of Minn. Stat. ch. 290 (2000). Minn. Stat. § 290.17 (2000) establishes rules under which a portion of the income of non-resident individuals and businesses may be allocated to jurisdictions other than Minnesota. However, section 290.17, subdivision 1(a) states: "the income of a resident individual is not subject to allocation outside this State." Section 290.014, subdivision 1, provides: "all net income of a resident individual is subject to tax under this chapter."

Until 1987, Minn. Stat. § 290.01, subd. 7 (1986), defined "resident" for purposes of Minn. Stat. ch. 290 as: "any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the taxable year who shall not, during the whole of such taxable year, have been domiciled outside the state." In 1987, the Minnesota Legislature amended the residency definition to its present form. *See* Act of May 28, 1987, ch. 268, Art. 1, § 10, 1987 Minn. Laws 1039, 1044.

---

certain state taxation even when Congress has failed to legislate on the subject." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995).

Section 290.01, subdivision 7 (2000), provides in relevant part:

> The term "resident" means (1) any individual domiciled in Minnesota . . . and (2) any individual domiciled outside the State who maintains a place of abode in the State and spends in the aggregate more than one-half of the tax year in Minnesota. . . . The term "abode" means a dwelling maintained by an individual, whether or not owned by the individual and whether or not occupied by the individual, and includes a dwelling place owned or leased by the individual's spouse.[4]

With the 1987 legislation, Minnesota joined "the vast majority of states in . . . utilizing definitions of residency for income tax purposes that include another category of taxpayers in addition to domiciliaries." *Tamagni v. Tax Appeals Tribunal*, 91 N.Y.2d 530, 535, 695 N.E.2d 1125, 1128, 673 N.Y.S.2d 44, 47, *cert. denied*, 525 U.S. 931 (1998).[5]

In *Tamagni*, the New York Court of Appeals quoted the sponsors of similar legislation, originally enacted in that state in 1922, as follows: "We have several cases of

---

[4] In 2001, the Legislature made certain non-substantive changes in the language of Section 290.01, subd. 7. See Act of June 30, 2001, Minn. Laws 2001, 1st Sp. Sess., ch. 5, art. 9, § 2. This amendment has no effect on the issues in this case.

[5] Indeed, it has been noted that only a handful of states limit their definition of "resident" to persons domiciled in the state. Seth Goldstein, Note, *"Resident" Taxpayers: Internal Consistency, Due Process, and State Income Taxation*, 91 Colum. L. Rev. 119, 122 n. 19 (1991).

multimillionaires who actually maintain homes in New York and spend ten months of every year in those homes . . . but they . . . [though] for all intents and purposes . . . residents of the state, have maintained a voting residence elsewhere and insist on paying taxes as nonresidents. In short, the statute is intended to discourage tax evasion by New York residents." *Id.* (citations and internal quotations omitted).

Petitioners argue that, as applied here, Minn. Stat. § 290.01, subd. 7(2) violates the so-called dormant Commerce Clause of the United States Constitution. This contention is wholly without merit. Decisions of this Court have repeatedly rejected constitutional claims like those Petitioners press.

The State's income tax assessment in the instant case has no connection to interstate commerce. "The dormant Commerce Clause prevents state taxes and regulatory measures impeding private trade in the national marketplace. . . . Thus, in the absence of actual or prospective competition between the supposedly favored and disfavored entities in a single market, there can be no local preference . . . to which the dormant Commerce Clause may apply." *General Motors Corporation v. Tracy*, 519 U.S. 278, 300 (1997), (internal quotes omitted).

Petitioners identify the business they operated during the period in question as that of "servic[ing] the foreign currency exchange needs of the casino industry." Pet. for Cert. 3. What the Petitioners have wholly failed to show, however, is that Minnesota's income tax structure operates to favor or disfavor any taxpayer engaged in that businesses, vis-à-vis interstate commerce.

Petitioners are liable for Minnesota income taxes on their worldwide income "because, through [their] . . . contacts with Minnesota [they] availed [themselves] of the . . . services, benefits and protections provided to [them] by Minnesota. The requirement that [Petitioners] pay Minnesota income taxes was triggered by conduct that took place wholly within Minnesota and that did not substantially affect interstate commerce." *Luther*, 588 N.W.2d at 511, discussed with approval in the decision below, 621 N.W.2d at 741, App. to Pet. for Cert. 9a.

Central to Petitioners' argument is the broad contention that the Federal Constitution prohibits the state from levying an unapportioned tax on income of a non-domiciliary resident derived from interstate commerce. As applied to the income of a domiciliary, as Respondent contends Petitioners were, during the period in question, this contention is untenable.

It is "a well-established principle of interstate and international taxation . . . that a jurisdiction . . . may tax all the income of its residents, even income earned outside the taxing jurisdiction. . . . [T]hat the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicile itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government. . . . Neither . . . is affected by . . . the source from which the income is derived." *Oklahoma State Tax Comm. v. Chickasaw Nation*, 515 U.S. 450, 462-463 (1995) (internal

quotes omitted), citing *New York ex rel. Cohn v. Graves* 300 U.S. 308, 312-313 (1937).

> The obligation of one domiciled within a state to pay taxes there arises from the unilateral action of the state government in the exercise of the most plenary of sovereign powers, that to raise revenue to defray the expenses of government and to distribute its burdens equably among those who enjoy its benefits. *** It is enough, so far as the constitutional power of the state to levy it is concerned, that the tax is imposed by . . . [a state] on its own citizens with reference to the receipt and enjoyment of income derived from conduct of business, regardless of the place where it is carried on.

Lawrence v. State Tax Comm'n, 286 U.S. 276, 280-81 (1932).

The Court in *Lawrence* upheld Mississippi's imposition of taxes on income derived by a Mississippi resident from work done in Tennessee. Neither before nor since has this Court hinted that a state's constitutional authority to tax the income of one of its residents depends on the source or nature of the income. *See, e.g., Maguire v. Trefry*, 253 U.S. 12 (1920) (state may constitutionally subject out-of-state trust income to taxation); *New York ex rel. Cohn v. Graves*, 300 U.S. 308 (1937) (state may tax out-of-state investment income).

This Court has likewise repeatedly rejected Commerce Clause challenges to such taxation. "[I]t has been established since 1918 that a net income tax on revenues derived from interstate commerce does not offend constitutional limitations upon state interference with such commerce." *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 458-59 (1959) (citing *William E.*

Peck and Co. v. Lowe, 247 U.S. 165 (1918), and *United States Glue Co. v. Town of Oak Creek*, 247 U.S. 321 (1918)).

Petitioners effectively concede that if they were Minnesota domiciliaries during the period in question, then the Respondent's tax assessment was constitutionally permissible. Petitioners thus urge – though pointing to no supportive authority – a constitutional difference between the taxability of domiciliaries and that of persons deemed state residents under a statute like Minn. Stat. § 290.01, subd. 7(2). There is no logical or precedential basis for such a distinction, and the courts confronting the question have uniformly declined to draw one.

In *Tamagni v. Tax Appeals Tribunal*, 91 N.Y.2d 530, 695 N.E.2d 1125, 673 N.Y.S.2d 44, *cert. denied*, 525 U.S. 931 (1998) the court sustained a New York statute similar to section 290.01, subd. 7(2) against a claim that, as applied to income derived from out-of-state intangibles, the statute created an unconstitutional risk of double taxation.[6]

---

[6] Petitioners criticize the *Tamagni* decision (Pet. for Cert. at 9, 20), noting that one judge dissented from the decision of the New York Court of Appeals in that case. But that dissent was predicated on the unavailability of a credit for taxes paid by a New York resident to the jurisdiction of the resident's domicile. "New York could have avoided this burden [multiple taxation] by recognizing a credit for taxes paid to other states on income from intangible asset. . . . New York, however, has not removed the risk of multiple taxation through a tax credit. As a result, the statute that triggers this risk . . . is unconstitutional under the dormant Commerce Clause." *Tamagni*, 91 N.Y.S.2d at 549, 695 N.E.2d at 1137, 673 N.Y.S.2d at 56 (Titone, J., dissenting). In contrast, Minnesota provides such a credit. *See* Minn. Stat. § 290.06, subd. 22 (2000), discussed in the text at pp. 14-15, *infra*. The *Tamagni* dissent can thus provide no solace to Petitioners.

The same court had earlier dismissed a facial constitutional challenge to that statute. *See People ex rel. Ryan v. Lynch*, 262 N.Y. 1, 186 N.E. 28 (1933). The Minnesota Supreme Court's holdings in both the instant case and *Luther* also reject the notion that there is any constitutional distinction, for income tax purposes, between domiciliaries and non-domiciliary residents. The courts have also rejected constitutional challenges to a comparable Maryland statute. *See Reiling v. Lacy*, 93 F. Supp. 462 (D. Md. 1950) (three-judge court), *appeal dismissed sub nom. Reiling v. Tawes*, 341 U.S. 901 (1951); *Wood v. Tawes*, 181 Md. 155, 28 A.2d 850 (1942), *cert. denied* 318 U.S. 788 1943). There is no contrary authority.

Petitioners' invocation of the dormant Commerce Clause cannot produce a different result.[7] "There is no reason to suppose that the latitude afforded states under the Due Process Clause is somehow divested by the Commerce Clause merely because the taxed activity has some connection to interstate commerce, particularly when the tax is levied on an activity conducted within the state." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 623 (1981) (quoted with approval in *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 190-191 (1989)).

---

[7] In *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), the Court held that while North Dakota had sufficient contacts for due process purposes with an interstate mail order company to levy taxes on the company's sales within that state, the taxpayer's nexus with North Dakota was so tenuous that such a levy would violate the dormant Commerce Clause. Petitioners do not argue that their contacts with Minnesota were similarly insubstantial.

Under *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977), a state tax does not run afoul of the Commerce Clause if the tax is: "applied to an activity with a substantial nexus with the taxing state, fairly apportioned, does not discriminate against interstate commerce and is fairly related to the services provided by the state."

Petitioners essentially argue that, as applied to them, Minn. Stat. § 290.01, subd. 7(2) imposes a tax that is not fairly apportioned and discriminates against interstate commerce. These contentions are unpersuasive.

Complete Auto's fair apportionment test has as its "central purpose . . . to insure that each state taxes only its fair share of an interstate transaction." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 184 (1995) (quoting *Goldberg v. Sweet*, 488 U.S. 252, 260-261 (1989)). Embedded in the constitutional mandate of fair apportionment are requirements that the tax be both internally and externally consistent. "Internal consistency is preserved when the imposition of a tax identical to the one in question by every other state would add no burden to interstate commerce that intrastate commerce would not also bear. . . . External consistency, on the other hand, looks not to the logical consequences of cloning but to the economic justification for a state's claim upon the value taxed, to discover whether a state's tax reaches beyond that portion of value that is fairly attributable to economic activity within the taxing state." *Id.* at 185; *accord Container Corp. v. Franchise Tax Board*, 463 U.S. 159, 169-170 (1983).

Petitioners urge that Minnesota was constitutionally required to apportion their income. This argument misconceives the rationale for the principle of apportionment. "Apportionment is permitted only when precise geographic measurement [of income] is not feasible." *Trinova Corporation v. Michigan Dep't of Treasury*, 498 U.S. 358, 374 (1991).

Since the leading case of *Underwood Typewriter Co. v. Chamberlain*, 254 U.S. 113 (1920), it has been settled that a state may employ a reasonable apportionment formula to establish a jurisdictional tax liability for a unitary, multistate enterprise. The need for apportionment has been premised on the impossibility of allocating the income of such an enterprise to any particular jurisdiction. With respect to individual income, however, these difficulties are absent. Individual income has always been constitutionally assignable to the jurisdiction where the recipient of that income resided.

Moreover, Minn. Stat. § 290.06, subd. 22 (2000), provides, through a credit, that a taxpayer may generally offset income taxes paid to other jurisdictions against Minnesota income tax liability. Thus, Minnesota's statutory scheme eliminates even the theoretical risk of multiple taxation.

There is no merit to Petitioners' assertion (Pet. for Cert. at 14-15 & n. 5) that despite the provision of a credit by Section 290.06, subd. 22, the Minnesota scheme violates the internal consistency prong of the *Complete Auto* test. Section 290.06, subd. 22 provides that if an individual domiciled in another state is subject to tax under Section 290.01, subd. 7(2), Minnesota will allow a credit

only if the jurisdiction of the taxpayer's domicile does not confer a similar credit. Were this provision replicated in every jurisdiction, and the taxpayer's domiciliary jurisdiction conferred no tax credit, the taxpayer would then receive credit in every jurisdiction in which the taxpayer was deemed a non-domiciliary resident. On the other hand, if the taxpayer's domiciliary jurisdiction allowed a credit, that credit would reduce *pro tanto* the taxpayer's income tax liability in her or his domiciliary jurisdiction. There would thus be no multiple taxation as between the jurisdiction of the taxpayer's domicile and any jurisdiction with a statute like Minn. Stat. § 290.06, subd. 22. In contending otherwise, Petitioners misread the statute.

"The external consistency test asks whether the state has taxed only that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed." *Goldberg v. Sweet*, 488 U.S. 252, 262 (1989) citing *Container Corp. v. Franchise Tax Board* 463 U.S. 159, 169-70 (1983). The record in the instant case does not demonstrate any violation of this principle. To the contrary, the Courts below found that during the period in question Petitioners maintained a home, spent a substantial majority of their time and conducted the bulk of their business in Minnesota. *See* 621 N.W.2d at 737, App. to Pet. for Cert. 1a-2a, 22a-23a. This case features no trace of the kind of overreaching at which the external consistency principle is directed.

Similarly wide of the mark is Petitioners' contention (Pet. for Cert. 2, 7, 17) not presented as such to the courts below that as applied to Petitioners, Minn. Stat. § 290.01, subd. 7(2) somehow unconstitutionally impinges on Nevada's policy decision not to levy a state income tax. This

Court has never suggested that a state's decision to adopt such a policy has constitutional implications, under the dormant Commerce Clause or elsewhere, for other jurisdictions. *Cf. Florida v. Mellon*, 273 U.S. 12 (1927). Moreover, the only plausibly relevant effect Minnesota's statutory tax residency definition might have on Nevada's no-income tax policy would be to induce some taxpayers to abandon their Minnesota residences and move to Nevada. During the period in question, the Minnesota statute clearly did not have that effect on Petitioners themselves. Petitioners' claims on this score are specious.

To support their contention that the Commerce Clause is implicated here, Petitioners point to *Wickard v. Filburne*, 317 U.S. 111 (1942) and *Camps Newfound/ Owatonna, Inc. v. Town of Harrisson*, 520 U.S. 564 (1997). *See* Pet. for Cert. 18. In *Wickard* this Court upheld application to local activity of a federal regulatory scheme enacted in furtherance of Congress's authority to regulate interstate commerce. In *Camps Newfound*, the Court struck down a state tax exemption that facially discriminated against commercial entities primarily serving out-of-state patrons. The instant case does not involve federal regulation. Nor does the Minnesota tax residency statute in any way disfavor income derived by a Minnesota resident from out-of-state sources. Accordingly, cases like *Wickard* and *Camps Newfound* are irrelevant here.

CONCLUSION

Minnesota's statutory scheme taxes the worldwide income of individuals who, like Petitioners, spend a majority of their time in Minnesota, and occupy a residence there. If such a resident pays income taxes to another jurisdiction, Minnesota allows a corresponding credit against this tax liability. Petitioners have failed to show any constitutional deficiency in this scheme.

"It was not the purpose of the Commerce Clause to relieve those engaged in interstate commerce from their just share of a state tax burden even though it increases the cost of doing the business." *Western Livestock v. Bureau of Revenue*, 303 U.S. 250, 254 (1938), quoted in *Commonwealth Edison Company v. Montana*, 453 U.S. 609, 623-624 (1981). This Court should decline Petitioners' request to abandon that rule. The Petition for Certiorari should be denied.

Respectfully submitted,

MIKE HATCH
Attorney General
State of Minnesota

CRAIG R. ANDERSON
Assistant Attorney General
Atty. Reg. No. 1764

600 N. Robert St., Suite 4000
Mail Station 0600
St. Paul, MN 55146-0600
(651) 296-3424

Attorney for Respondent